

U.S. DISTRICT JUDGE JAMES L. ROBERT  
U.S. MAGISTRATE JUDGE J. RICHARD CREATURA

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

HELEN THORNTON, on behalf of herself and  
all others similarly situated, and NATIONAL  
COMMITTEE TO PRESERVE SOCIAL  
SECURITY AND MEDICARE,

*Plaintiffs,*

vs.

COMMISSIONER OF SOCIAL SECURITY,

*Defendant.*

Civil No. 2:18-cv-01409-JLR-JRC

**NOTICE OF JOINT STIPULATION  
REGARDING NUMEROSITY, AND  
JOINT MOTION TO VACATE  
DISCOVERY SCHEDULE**

Note on Motion Calendar: June 29, 2020

NOTICE OF JOINT STIPULATION REGARDING  
NUMEROSITY, AND JOINT MOTION TO VACATE  
DISCOVERY SCHEDULE

2:18-cv-01409-JLR-JRC

U.S. Department of Justice  
Civil Division, Federal Programs Branch  
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Telephone: (202) 305-8576

The parties, having conferred, (1) jointly notify the Court that the parties have entered into a stipulation (attached to this filing as Exhibit 1) that will resolve the question of numerosity in this litigation, and (2) jointly request that any remaining discovery-related deadlines and the briefing schedule set forth in the Court's May 18, 2020 Order be vacated, because they are unnecessary in light of the parties' stipulation. As good cause for this request, the parties jointly offer the following:

1. On May 18, 2020, the Court authorized discovery regarding the number of individuals that met the following proposed class definition, from the Report and Recommendation issued in this matter: "All persons nationwide who presented claims for social security survivor's benefits based on the work history of their same-sex partner and who were barred from satisfying the marriage requirements for such benefits because of applicable laws that prohibited same-sex marriage. This class is intended to exclude any putative class members in *Ely v. Saul*, No. 4:18-cv-00557-BPV (D. Ariz.)." ECF No. 82.

2. On May 29, Plaintiffs served discovery requests: eleven interrogatories, six requests for admission, and fifteen requests for the production of documents.

3. As reflected in the attached stipulation, although Defendant represents that identifying the precise number of putative class members is difficult (among other reasons, due to limitations on access to some of Defendant's records and files because of the ongoing pandemic), after a reasonably diligent inquiry, Defendant now believes that that number likely exceeds 150, based on the records that have been reviewed. Accordingly, Defendant no longer disputes that the putative class (as defined above and in the Report & Recommendation) is sufficiently numerous to satisfy Rule 23(a)(1). *See, e.g., Sullivan v. City of Berkeley*, 328 F.R.D. 352, 355-56 (N.D. Cal. 2018) ("The numerosity requirement is not tied to any fixed numerical threshold, but courts generally find the numerosity requirement satisfied when a class includes at least forty members.").

4. Defendant continues to argue that certification of any class in this matter is inappropriate, for the reasons stated in Defendant's prior filings, with which Plaintiffs disagree.

5. As a result of the parties' stipulation and Defendant's concession, the parties respectfully request that the Court vacate any remaining discovery deadlines and the briefing schedule set forth in the Court's May 18, 2020 Order.

Dated: June 29, 2020

Respectfully submitted,

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**JOINT STIPULATION  
REGARDING NUMEROSITY**

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The parties **HEREBY STIPULATE** as follows:

1. On May 18, 2020, the Court authorized discovery regarding the number of individuals that met the following proposed class definition, from the Report and Recommendation issued in this matter: “All persons nationwide who presented claims for social security survivor’s benefits based on the work history of their same-sex partner and who were barred from satisfying the marriage requirements for such benefits because of applicable laws that prohibited same-sex marriage. This class is intended to exclude any putative class members in *Ely v. Saul*, No. 4:18-cv-00557-BPV (D. Ariz.).” ECF No. 82.

2. Defendant has represented that, although identifying the precise number of putative class members is difficult (among other reasons, due to limitations on access to some of Defendant’s records and files because of the ongoing pandemic), after a reasonably diligent inquiry, that number likely exceeds 150, based on the records that have been reviewed. Plaintiffs do not dispute that the number of putative class members exceeds 150 individuals.

3. The parties therefore agree, for purposes of this litigation, that the putative class (as defined above and in the Report & Recommendation) is sufficiently numerous to satisfy Rule 23(a)(1).

4. Defendant continues to argue that certification of any class in this matter is inappropriate, for the reasons stated in Defendant’s prior filings, with which Plaintiffs disagree.

5. Defendant’s deadline to respond to Plaintiffs’ discovery requests is tolled pending the Court’s consideration of the parties’ joint motion to vacate the discovery schedule in this matter, to be filed concurrently with this stipulation.

1 Dated: June 29, 2020

Respectfully submitted,

2 JOSEPH H. HUNT  
3 Assistant Attorney General

4 BRAD P. ROSENBERG  
5 Assistant Branch Director

6 /s/ Stephen M. Pezzi  
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**ORDER**

ORDER

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1 Upon consideration of the parties' stipulation regarding numerosity, the parties' joint motion  
2 to vacate the discovery schedule, and the entire record herein, it is hereby

3 **ORDERED** that the parties' joint motion is **GRANTED**; and it is further

4 **ORDERED** that any remaining discovery deadlines and the briefing schedule set forth in  
5 the Court's May 18, 2020 Order are hereby **VACATED**.

6 **SO ORDERED.**

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8 DATED this 9th day of July, 2020.

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12 JAMES L. ROBART  
13 United States District Judge  
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ORDER

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